

**BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA**

DOCKET NO. 2013-55-C – ORDER NO. 2013-__

December ____, 2013

In Re:)	
)	
South Carolina Telephone Coalition Petition)	
to Modify Alternative Regulation Plans Filed)	South Carolina Cable Television
Pursuant to S.C. Code Ann. § 58-9-576(B) to)	Association's Proposed Order
Take Into Account Recent Action by the)	Granting Motion To Require
Federal Communications Commission)	Reductions in Amounts Drawn
)	from the USF
)	

PROCEDURAL BACKGROUND

This matter comes before the Public Service Commission of South Carolina (“Commission”) upon the Motion filed by the South Carolina Cable Television Association (“SCCTA”) seeking an order from this Commission requiring reductions in the amount of funding being drawn from the South Carolina Universal Service Fund (“SC USF”) by those members of the South Carolina Telephone Coalition (“Coalition”) that have raised their rates for basic local residential service.

On February 8, 2013, the Coalition filed a petition in this docket seeking to increase the maximum rates that its members can charge for basic local residential service. The Coalition requested that the new price caps be established to allow its members the flexibility to meet the rate floors as established by the Federal Communications Commission (“FCC”) in its order comprehensively reforming universal

service and intercarrier compensation.¹ Other parties in this docket, including the SCCTA, supported the Coalition's requested increase in maximum rates, but the SCCTA asserted that the proposed increases would require adjustments to the SC USF. The Coalition's request for an increase in the maximum rate was granted in Commission in Order No. 2013-201.

On May 6, 2013, six members of the Coalition—Chester Telephone Company, Home Telephone Company, Lockhart Telephone Company, PBT Telecom, Ridgeway Telephone Company, and West Carolina Rural Telephone Cooperative—filed tariff revisions to increase basic local residential rates. These six companies are Carriers of Last Resort ("COLRs") and receive subsidy funding from the SC USF.

Following approval of the increase in maximum rates and the implementation of rate increases by the six COLRs, the SCCTA filed the present motion seeking an order requiring those six companies to determine the amount of additional revenues generated from the rate increases in order to determine how much SC USF subsidies should be reduced to offset the additional revenues. The SCCTA contends that these additional revenues must be offset by a reduction in the SC USF in order for the fund to be revenue-neutral. The SCCTA also contends that the revenue reduction is required by S.C. Code Section 58-9-280(E) which establishes that the size of the USF shall be the difference

¹ *Report and Order and Further Notice of Proposed Rulemaking, Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; GN Docket No. 09-51; CC Docket Nos. 01-92, 96-45; WT Docket No. 10-208; and FCC 11-161, rel. Nov. 18, 2011 ("*USF-ICC Transformation Order*").

between the cost of providing basic local service and the maximum amount that a COLR can charge for basic local service.

The Commission held oral arguments on the motion on September 11, 2013. The SCCTA was represented by Frank R. Ellerbe, III, Esquire, and Bonnie D. Shealy, Esquire. The Coalition was represented by M. John Bowen, Jr., Esquire and Margaret M. Fox, Esquire. Bonnie Shealy also represented tw telecom of south carolina. John J. Pringle, Jr., Esquire represented Sprint Communications Company, L.P. (“Sprint”). C. Joanne Wessinger-Hill, Esquire represented Frontier Communications of the Carolinas, Inc. and Jeanne W. Stockman, Esquire represented United Telephone Company of the Carolinas, d/b/a Centurylink. Patrick W. Turner, Esquire represented BellSouth Telecommunications, LLC, d/b/a AT&T South Carolina. John M.S. Hoefer, Esquire represented Verizon Long Distance, LLC; Verizon Select Services, Inc.; MCI Communications Services, Inc., d/b/a Verizon Business Services; and MCImetro Access Transmission Services. LLC. Nanette S. Edwards, Esquire represented the S.C. Office of Regulatory Staff (“ORS”).

On October 28, 2013, the SCCTA requested that the Commission take judicial notice of the July 12, 2012, Incumbent Local Exchange Carrier (“ILECs”) annual reports and the surrogate cost information provided to the Commission by ORS on May 3, 2013, in Non Docketed Case No. 2013-6-C. On November 11, 2013, the Coalition filed a response opposing the request for judicial notice.

FINDINGS OF FACT

Based upon the entire record in this proceeding and the oral arguments presented during the hearing, the Commission makes the following findings of fact:

1. The SC USF was established by this Commission in Docket No. 97-239-C. In Order No. 2001-419 in that docket this Commission approved a plan advanced by the South Carolina Telephone Association (“SC Telephone Assoc.”) to “phase-in” the subsidies to be provided to COLRs through the SC USF. As part of the approval of the phase-in plan the SC Telephone Assoc. calculated that SC COLRs were receiving a total of \$340 million in implicit subsidies to support universal service prior to implementation of the SC USF. *See* Docket Number 97-239-C, Commission Order No. 2001-419, p. 14. The \$340 million was calculated as the difference between the maximum rate that COLRs were allowed to charge for basic residential service and the cost of that service.

2. The Commission approved the first phase of implementation of the USF by authorizing \$38.4 million to be withdrawn from the SC USF. Under the phase-in plan this explicit subsidy from the SC USF was offset by rate reductions that were intended to reduce implicit subsidies by \$38.4 million, thereby creating a “revenue neutral” USF. Subsequent requests for additional USF funding were also accompanied by offsetting rate reductions and were approved in Order No. 2003-215 (\$6.6 million), Order No. 2004-452 (\$4.2 million) and Order No. 2004-573 (\$1.2 million). Under the revenue neutral phase-in plan, as the COLRs have received more explicit subsidy funding from the SC USF,

their implicit subsidies have decreased, keeping the total subsidy level for each company at the figure approved in 2001.²

3. Since 2004 this Commission has not approved any additional withdrawals from the USF, no further rate reductions have been approved, and no new cost studies have been considered or approved.

4. In this docket this Commission first approved the Coalition's request for an increase in the maximum amount that all COLRs can charge for basic local residential services. See Order No. 2013-201. Then specific rate increases for the basic local exchange services of six COLRs were implemented by the filing of tariffs by the six companies. As a result of these actions the six COLRs have raised their maximum rates as well as their actual rates and are receiving additional revenues from their customers.

5. The USF is defined as the difference between the cost of providing basic local services and the maximum charge that is allowed for such service. Any increase in the maximum rate reduces the difference between the rate and the cost and reduces the size of the USF. Accordingly, the additional revenues received by the six COLRs should be offset by reductions in the USF subsidies they are allowed to draw.

² In 2010 AT&T elected to be regulated under S.C. Code Section 58-9-576(B). That election sharply reduced the amount of SC USF subsidies that AT&T received and has diminished the overall size of the SC USF. However, all COLRs other than AT&T, including the six that have raised their maximum rates for basic local service, continue to receive the same annual amount of SC USF subsidies that were approved for them from 2001 through 2004.

CONCLUSIONS OF LAW

- A. The SC USF's statutory requirements and the Commission's implementing orders require a decrease in SC USF subsidy when rates are increased, so that the fund remains revenue neutral.**

The SCCTA's motion seeks to have the SC USF subsidy for these six companies reduced to offset the revenues resulting from the increased basic local exchange rates. We are persuaded by the requirements of S.C. Code Section 58-9-280(E) and our prior orders implementing the SC USF statute that SCCTA is correct.

S.C. Code Section 58-9-280(E)(4) provides that the

size of the USF shall be determined by the commission and shall be the sum of the difference, *for each carrier of last resort*, between its costs of providing basic local exchange services and the maximum amount it may charge for the services.

(emphasis added). The SC USF statute also provides that subsidies shall be distributed to a COLR upon demonstration "of the amount of the difference between the cost of providing basic local service and the maximum amount it may charge for service." S.C. Code § 58-9-280(E)(5). The SCCTA's position is that the basic calculation is the difference between costs and the price. If there is no difference between the cost of providing the service and the rate being charged, there would be no SC USF by operation of these statutory provisions. Therefore, the SCCTA contends that when the rates change, the size of the fund should change.

The Commission's approved Guidelines and the approved formula to calculate per line support also supports this interpretation.

High Cost Support Per Line is calculated as the difference between the Commission-approved cost per line of providing the universal supported services and the sum of the following: Maximum Commission approved

basic local service rates within each Designated Support Service Area, the Federal Universal Service Support and Federal Subscriber Line Charge associated with the supported line.

Order 2001-996, Exhibit B, p. 4, IV(E); p. 7, VI; and Attachments II through V.

According to this approved calculation if any one of the following components changes, the net state high cost support per line must change:

	Cost per line, approved by Commission in SC USF Order
minus	authorized maximum rate
minus	federal per line support
minus	<u>subscriber line charge</u>
equals	net state high cost support per line.

We agree with SCCTA that it is a matter of mathematics. In order for the SC USF to remain revenue neutral as required by statute and the Commission's implementing orders, when rates for basic local exchange services are increased the SC USF subsidies that COLRs are allowed to draw must be decreased.

B. Changes in the components to calculate SC USF support affects the amount of SC USF subsidy a COLR is entitled to receive.

The Coalition responded to the SCCTA motion with two arguments. First, the Coalition contends the rate increase was required because of the FCC's *USF-ICC Transformation Order*. This argument ignores the fact that the approved calculation in the phase-in plan takes federal support into account as part of determining the high cost support per line. If federal funding changes, the COLRs may seek Commission approval to adjust the amounts received from the SC USF. No such request has been made, and the COLRs have not requested changes in the amounts received because of changes in the federal funding since their subsidy amounts were established from 2001 through 2004.

During the oral argument the COLRs cited the South Carolina Supreme Court decision acknowledging that the “sizing of the fund is flexible because variables such as federal funding, subscriber line charge, and cost requirements determined by updated studies may continually affect the fund’s size.” *Office of Regulatory Staff v. Public Service Com’n*, 374 S.C. 46, 647 S.E.2d 223, 230 (2007). Changes in the components used to calculate support can affect the net SC USF support. But the only change currently before this Commission is an increase in the maximum rate that is being charged. That change requires a reduction in the amount of subsidies received by the six COLRs to offset the additional revenues they will receive from their rate increases. To hold otherwise would be to ignore S.C. Code Section 58-9-280(E), the Supreme Court, the SC USF Orders, and the approved Guidelines and Administrative Procedures implementing the SC USF.

C. The Phase-In Plan does not insulate the COLRs from changes in the amount of subsidy they are entitled to receive if rates are increased.

The Coalition’s second argument against the motion is that the increase in local rates should not be offset by a reduction in the SC USF subsidy because the COLRs have only taken a portion of their allowed subsidy due to the phase-in plan approved by the Commission. This position ignores the revenue neutral requirement of the SC USF. *See* Order No. 97-753, p. 8 and Order No. 2001-996.

The purpose of the SC USF is to remove subsidies embedded in rates and replace those subsidies with an explicit subsidy from the universal service fund. As required by statute, the Commission first established \$340 million as the estimate of the size of the universal service subsidy to COLRs. The \$340 million subsidy is composed of two parts:

the explicit subsidy being paid from the USF and the implicit subsidy that still remains in the COLRs' rates. The SCCTA contends that if the amount of additional revenue produced by the rate increase is not offset by a reduction in the amount of USF subsidy, then the COLRs will be over-recovering. If a COLR has replaced only a portion of implicit subsidy with SC USF funds, that does not eliminate the remaining implicit subsidy still remaining in rates. The Coalition admits that the USF Guidelines require revenue neutrality, but it does not address the issue of over-recovery through the implicit subsidy in rates combined with the explicit SC USF subsidy. The Coalition simply argues that its increased revenues from the rate increases are irrelevant to USF funding. We disagree. If a COLR increases the maximum amount being charged for basic local exchange services, then the COLR's SC USF subsidy must be adjusted to prevent over-recovery.

D. COLR Annual Filings and Cost Information.

During the oral argument held in this proceeding, the Coalition advanced the argument that the SCCTA's motion should be denied in part because the COLRs make annual filings that ensure that no over-recovery of USF subsidies occurs.

And that's the mechanism that the Commission set up to make sure that you had good oversight and to make sure that, as the fund moved along, the companies that were trying to draw money out of the USF were not drawing too much money, and it gave you the continuation of the – like I say – the oversight and review and control over the fund.

Now, as your administrator, what's happened is when you transferred that to the ORS, that's what ORS does now. That's the reason for the annual reports that are filed with the ORS and all of those type of things, to be sure that the mechanism works.

Tr. p.47, lines 1 - 14. During the oral argument there were additional references by counsel for various parties to the annual filings made by the COLRs. Tr. p.48, lines 5-15; p. 61, line 7 through p.63, line 5; p.76, line 23 through p.80, line 12; p.82, line 10 through p. 84, line 25. There were also specific references to the recent cost studies that the COLRs filed with the ORS. See Tr. p.61, line 25 through p.62, line 22; p.83, line 22 through p. 84, line 12.

Following the oral argument the SCCTA submitted a request that the Commission take judicial notice of the COLRs' 2012 annual filings and surrogate cost information provided by the COLRs to ORS in 2013. These documents were filed by the ORS on May 3, 2013, and are in the files of this Commission in Non-Docketed Case 2013-6-C. The SCCTA argued that these documents should be reviewed by the Commission in order to assess the Coalition argument made during the oral argument. The Coalition has filed a memorandum opposing the request to take judicial notice.

The Coalition makes several cogent points in opposing the request to take judicial notice: these documents are protected by a confidentiality order, are not available to most parties in the docket, and have not been examined or approved by this Commission. Nevertheless we believe it is appropriate for us to take judicial notice of the COLR filings for the limited purpose of assessing the argument advanced by the Coalition in the oral argument on the SCCTA motion.³

³ The Commission's rule on evidence specifically incorporates the S.C. Rules of Evidence and specifically provides that the Commission may take notice of judicially cognizable facts. S.C. Code Regs. 103-846. Records of the court are frequently the subject of judicial notice. *Colonial Penn Ins. Co. v. Coil*, 887 F.2d 1236 (4th Cir. 1989). See also *Freeman v. McBee*, 280 S.C. 490, 494, 313 S.E. 2d 325 (Ct. App. 1984). We conclude that these filings are the type of documents that are appropriate for judicial notice.

The 2012 ILEC annual filings submitted to this Commission by ORS do not support the argument advanced by the Coalition that the filings are a sufficient mechanism to monitor the subsidies received by COLRs. The annual filings are not consistent with the amounts received by the COLRs and it does not appear that the filings provide the ORS or this Commission with the ability to determine whether and to what extent COLRs may be over-recovering USF subsidies.

We have also reviewed the cost information submitted to the ORS by the Coalition and filed with this Commission by the ORS. We are not in a position to comment on these cost studies in any way except to say that they have not been approved by this Commission as is required by statute and previous order of this Commission. *See* S.C. Code Section 58-9-280(E) subsections (4), (5), (6) and (7); Order No. 2001-996, Exhibit B, Attachments II through V and Attachment VI (A). Because these cost studies have not been approved it is not appropriate for them to be used by COLRs in preparing their annual USF filings that are submitted to the ORS.

Our review of the materials in Non-Docketed Case 2013-6-C filed by ORS with this Commission does not support the Coalition argument that sufficient safeguards are in place regarding the USF and we therefore decline to deny the SCCTA motion on that basis.

IT IS THEREFORE ORDERED THAT:

1. The six COLRs that have increased their rates for basic local residential service shall provide estimates to this Commission of the additional revenues that will be generated by the rate increases;

2. The amount of SC USF subsidy received by each of these six companies shall be reduced to offset the additional revenue generated by the approved rate increases; and

3. This order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION

G. O'Neal Hamilton, Chairman

ATTEST

Nikiya "Nikki" Hall, Vice Chairman